

TENTH: To the extent the TENTH paragraph of third-party defendant's answer and counterclaim calls for legal conclusions, no response is required by Defendants/Third-Party Plaintiffs. To the extent the TENTH paragraph of third-party defendant's answer and counterclaim includes factual allegations, Defendants/Third-Party Plaintiffs deny the same.

FIRST SEPARATE DEFENSE

The Counterclaim fails to state a claim for which relief may be granted.

SECOND SEPARATE DEFENSE

The averments in Defendants' Third Party Complaint and the averments and defenses set forth in the Defendants' Answer to the Complaint are incorporated herein.

WHEREFORE, Defendants/Third Party Plaintiffs Bean Dredging, LLC, Bean Excavation, LLC, and C.F. Bean, LLC pray that the Binder Machinery Company LLC Counterclaim be dismissed with prejudice, with an award of costs, attorney's fees, and such other relief as this Honorable Court may deem appropriate.

Respectfully submitted,

PALMER BIEZUP & HENDERSON LLP

Dated: New York, New York
September 11, 2008

By: /s/ Michael B. McCauley
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